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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

1 JAMES V. DEPOLETO JR.,
2 Plaintiff,

3 V.

4 TAKEOVER INDUSTRIES,
5 INCORPORATED, *et al.*
6 Defendant.

7 Case NO. 2:22-cv-02013-GMN-BNW

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**S. DON BENNION DECLARATION IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL DISCOVERY
FROM TAKEOVER INDUSTRIES,
MICHEAL HOLLEY, TOBY MCBRIDE,
JOSEPH PAVLIK, TOM ZARRO, AND
NEXTGEN BEVERAGE, LLC**

Under penalty of perjury and pursuant to 28 U.S.C. § 1746, I, S. Don Bennion,
declare as follows:

1. I am one of the attorneys for Defendants Takeover Industries, Michael Holley,
Toby McBride, Joseph Pavlik, Tom Zarro and NextGen Beverage, LLC.
2. I submit this Declaration in support of Defendants' Opposition to Plaintiff's
Motion to Compel Discovery from Defendants.

1 3. I signed a Substitution of Counsel along with co-counsel Whitehead and Burnett
2 and appeared as counsel for Defendants November 14, 2024.

3 4. Since that time I have communicated with Plaintiff's counsel to coordinate
4 depositions, discovery responses, and agreed to extend any pending deadlines, dates regarding
5 filing of motions, conducting discovery, and otherwise to accommodate the needs of the parties
6 and schedule of counsel, including before and after the deposition of Defendant Toby McBride
7 November 15, 2024.

8 5. Since appearing as counsel for Defendants herein Defendants' counsel have
9 received and produced hundreds of documents responsive to Plaintiff's prior and current
10 discovery requests including, but not limited to, Defendants' responses to Third Requests for
11 Production of Documents and Admissions served by Plaintiff November 6, 2024. See Exhibit
12 A, correspondence between counsel from November 17 to December 17, 2024; See also,
13 Defendants' Sixth Supplemental Production of Documents and Responses to Requests for
14 Admissions and Production dated December 6 and 9, 2024; See also, Exhibit B, Defendants'
15 Seventh Supplemental Production of Documents dated December 31, 2024.

16 6. On November 20, 2024, I received Plaintiff's counsel's letter of the same date
17 (see Exhibit 14 to Plaintiff's instant Motion to Compel) and immediately responded to
18 Plaintiff's counsel regarding the statement regarding outstanding discovery requests via
19 telephone.

20 7. On November 21, 2024, I met with Plaintiff's counsel before, during and after
21 the deposition of Defendant Tom Zarro conducted in-person in Las Vegas. However, that day
22 no request was made to review and discuss the claimed outstanding discovery requests set forth
23 in the aforesaid November 20, 2024 letter, nor the preceding letters including the November 6,
24 2024 letter. However, during the deposition agreement was made by Defendant Zarro to
25 produce documents discussed in his November 21 deposition to the extent he had access to
26 these documents.

27 8. Counsel for the parties agreed to continue Defendant Zarro's deposition until
28 December 13, 2024. At that time Defendant Zarro requested additional time to provide

1 relevant documentation pursuant to a protective order and confidentiality agreement that related
2 to any relevant non-disclosure agreements he testified to during his prior deposition(s).

3 9. Since that time a proposed, stipulated protective order has been provided to
4 Plaintiff's counsel after documents were received relevant to the stipulated protective order.
5 See Exhibit C, Proposed Stipulated Protective Order.

6 10. Counsel for the parties continued to agree to extend any necessary deadlines in
7 light of these ongoing discussions including time for filing a motion to compel, depositions, or
8 otherwise. See Exhibit D, correspondence regarding depositions and related matters.

9 I declare under penalty of perjury under the laws of the United States that the foregoing
10 is true and correct.

11 Signed this 31st day of December 2024.

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S. Don Bennion

S. Don Bennion, Esq.

CERTIFICATE OF SERVICE

On December 31,2024 I served the following document(s): S. DON BENNION
**DECLARATION IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL DISCOVERY FROM TAKEOVER INDUSTRIES, MICHEAL
HOLLEY, TOBY MCBRIDE, JOSEPH PAVLIK, TOM ZARRO, AND NEXTGEN
BEVERAGE, LLC**

2. The document(s) were served by the following means to the person(s) as listed below:

a. ECF System

And all other parties requesting notice.

- b. US mail, postage prepaid
- c. Personal Service:

I personally delivered the documents(s) to the persons at these addresses:

For a party represented by an attorney, delivery was made by handing the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge, by leaving the document(s) in a conspicuous place in the office.

For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

d. By direct email (as opposed to the ECF system): Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the person(s) at the email addresses listed below. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

James Patrick Shea, Esq.

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Bart K. Larsen, Esq.

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17 *Attorney for Plaintiff*

18 e. By fax transmission

19 Based upon the written agreement of the parties to accept service by fax transmission
20 or a court order, I faxed the document(s) to the person(s) at the fax numbers listed below. No
21 error was reported by the fax machine that I used. A copy of the record of the fax transmission
22 is attached.

23 f. By messenger

24 I served the document(s) by placing them in an envelope or package addressed to the
25 person(s) at the addresses listed below and providing them to a messenger for service.

26 I declare under penalty of perjury that the foregoing is true and correct.

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28 /s/ S. Don Bennion, Esq.
29 Law Office of S. Don Bennion